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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Case No.

MARTIN BERMUDEZ, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

HOME DESIGN INC.,

Defendant.

NATURE OF THE ACTION

1
2 1. This is a class action against Defendant Home Design Inc. for the
3 manufacture, distribution, and sale of upholstered low profile standard and
4 platform beds, all of which suffered from an identical defect in design.
5 Specifically, the bed frame can collapse, posing a crush hazard that can result in
6 severe injury or death. A bed frame that poses such a hazard is unreasonably
7 dangerous. This defect rendered the Products unsuitable for their principal and
8 intended purpose. Indeed, Defendant “has received 128 reports of the beds
9 breaking, sagging or collapsing during use, including **36 injuries.**”¹ The beds
10 have been recalled, and consumers have been instructed to stop using them.

11 2. On January 18, 2024, Defendant Home Design Inc. and the U.S.
12 Consumer Product Safety Commission (“CPSC”) announced a recall of roughly
13 529,177 beds sold in the United States (the “Products”). Consumers were warned
14 that the Products “can break, sag or collapse during use, posing fall and injury
15 hazards to consumers.”² Further, consumers were specifically instructed to
16 “**immediately stop using the recalled beds.**”³

17 3. In other words, this case concerns a defect that Defendant admitted
18 renders the Products unable to be used for their intended purpose. There is no
19 dispute that a bed that cannot be slept on has no intrinsic value. Indeed, Defendant
20 has instructed consumers to stop using the Products.

21 4. And yet, Defendant refuses to refund customers that purchased the
22 Products. Instead, Defendant implemented a deficient recall that allows it to say
23 they are doing the right thing, when in fact the primary objective is to protect their
24 bottom line.

25
26 ¹ <https://www.cpsc.gov/Recalls/2024/Home-Design-Recalls-Upholstered-Low-Profile-Standard-and-Platform-Beds-Due-to-Fall-and-Injury-Hazards>

27 ² *Id.*

28 ³ *Id.*

1 5. Any requests for refunds are denied. A consumer only has one
2 publicly announced option: to contact Defendant for purported replacement slats
3 and side rails. But, even this option is illusory. First, Defendant claimed that
4 shipping of these parts would take several *months*, meaning that to have any value
5 whatsoever customers would have to find a place to store these large beds for
6 months on end *without using them* on the hope that one day Defendant's repair
7 *might* be effective.

8 6. Plaintiff appears to be one of the very customers of Defendant that
9 actually heard of Defendant's recall. On January 19, 2024, the day after the recall
10 was announced, Plaintiff followed the instructions on the recall webpage⁴ to get a
11 repair kit, emailed proof of purchase and photo of the bed, photo of the law label
12 on the back of the headrest, and his name and mailing address. In the initial email,
13 Plaintiff asked for a refund because, at the time, Defendant's dedicated webpage
14 for the recall stated that Defendant *was providing refunds*. Specifically,
15 Defendant's dedicated recall webpage stated:

16
17 **What You Should Do:**

18 Please immediately stop using the recalled beds and contact Home Design Inc. for a free repair kit.

19  To register for a refund, please email Home Design, Inc. at recall@homedesign-us.com and provide:

- 20 • A photo of the bed or a copy of the proof of purchase
21 • A photo of the law label on the back of the headrest
22 • Your name and mailing address

23 Once Home Design, Inc. confirms that you have one of the recalled beds, the company will send you a repair kit
24 free of charge. If you have questions regarding the recall or the assembly of the repair kit, please contact Home
25 Design Inc. toll free at 833-383-2967 Monday through Friday 8 am to 4 pm EDT or via email at
recall@homedesign-us.com

26 ⁴ The recall webpage contains instructions for customers to receive a repair kit.
27 "Consumers must send an image of the bed and the law label, or proof of
28 purchase, to recall@homedesign-us.com to receive the free repair."
<https://www.cpsc.gov/Recalls/2024/Home-Design-Recalls-Upholstered-Low-Profile-Standard-and-Platform-Beds-Due-to-Fall-and-Injury-Hazards>

1 7. Defendant did not respond for over two months, so Plaintiff followed
2 up on March 25, 2024. Almost a month later, on April 18, 2024, Defendant
3 responded saying that they are not offering refunds, and, instead, are only
4 providing repair kits. The next day, on April 19, 2024, Plaintiff responded, “OK
5 send me the repair kit then.”

6 8. Later on April 19, 2024, Defendant stated, “In response to the recall,
7 we will be sending you the repair kits. Please be advised that the estimated time
8 for these parts to arrive is approximately 2 -3 months.”

9 9. On April 23, 2024, Defendant emailed Plaintiff stating, “We are
10 pleased to inform you that the repair kits are expected to arrive in the next week,
11 and we will expediate the shipping process as soon as we receive them. You will
12 receive an email with the tracking number once your repair kit has been shipped.”

13 10. Defendant’s email shows that, despite announcing the recall in
14 January 2024, Defendant had not even started shipping repair kits to affected
15 customers or providing any other compensation three months later in late April
16 2024. But, Defendant’s failure to provide repair kits goes much further.

17 11. As of the filing of this Complaint, Plaintiff has *still* not received the
18 putative repair kit. Like Plaintiff, Plaintiff believes that virtually every other
19 customer, if not *every* customer, of Defendant’s Products has not received one
20 either. That means that Defendant has kept the proceeds from 529,177 Product
21 sales, costing between \$100 to \$300 each, for a total of between \$50 to \$150
22 million dollars, while 1) instructing the users of the Products that they should
23 immediately stop using them, 2) not offering a single dollar in refunds, and 3) not
24 even sending purported repair kits, or, 4) to the extent that some *fraction of one*
25 *percent* of Defendant’s customers got a repair kit, they received them many
26 months down the road after being unable to use their Products for many months.
27 A reasonable consumer cannot wait half a year or a full year for a repair kit for a
28 large bedframe that is unusable in the meantime. Such a repair has zero value to a

1 reasonable consumer. Instead, a reasonable consumer in such a situation would
2 throw out the bed frame and buy a new one. If the repair kit then suddenly arrived
3 nearly a year after Defendant instructed customers to stop using the beds, it would
4 have no value as reasonable consumers have long discarded Defendant's Products.

5 12. Further, a refusal to offer refunds guarantees that customers who have
6 lost faith in Defendant's products and no longer want to be sleeping on beds that
7 may collapse at any moment are left with no recourse. This approach benefits
8 Defendant by minimizing the cost and burden of the recall.

9 13. Plaintiffs is filing this class action lawsuit to seek all available relief
10 to consumers, to raise awareness that Defendant's Products are a hazard, and to
11 "encourage companies to take greater care in avoiding the production [and sale] of
12 hazardous products in the first place." *Kaupelis v. Harbor Freight Tools USA,*
13 *Inc.*, 2019 WL 6998661 at *10 (C.D. Cal. Oct. 9, 2019) (quoting *In re Mattel, Inc.*,
14 588 F. Supp. 2d 1111, 1115-16 (C.D. Cal. 2008)).

15 **PARTIES**

16 14. Plaintiff Martin Bermudez is a Temecula, California resident and may
17 be referred to in this Complaint as the "California Plaintiff." Plaintiff purchased
18 one of Defendant's Products subject to the recall new for \$127.99 (plus tax) within
19 the past four years using his VISA credit card, online. The bed was delivered to
20 his house in Temecula, California. Plaintiff experienced the defect at issue in this
21 case, as the bed he purchased collapsed multiple times. Due to the recall, Plaintiff
22 has stopped using the bed and it provides him no value. At the time of purchase,
23 there were no representations that disclosed or suggested in any way that the
24 Products contained the Defect, which was material to Plaintiff and became a basis
25 of the bargain. If the Products labeling or packaging had disclosed the Defect,
26 then Plaintiffs would not have purchased the Products, or would not have
27 purchased the Products on the same terms.
28

1 15. Defendant Home Design Inc is an Indiana corporation with a
2 principal place of business in Silver Lake, Indiana. Defendant shipped the
3 Products herein nationwide, including to California.

4 **JURISDICTION AND VENUE**

5 16. This Court has subject matter jurisdiction pursuant to 28 U.S.C.
6 § 1332(d)(2)(A) because this case is a class action where the aggregate claims of
7 all members of the proposed class are in excess of \$5,000,000.00, exclusive of
8 interest and costs, and at least one member of the proposed class is citizen of state
9 different from Defendant.

10 17. This Court has personal jurisdiction over Defendant because
11 Defendant's contacts with the forum are continuous and substantial, and
12 Defendant otherwise intentionally availed itself of the laws of this State through
13 the marketing of the Product at issue in California to consumers in California and
14 through sales of the Product in California to consumers in California, so as to
15 render the exercise of jurisdiction by this Court consistent with traditional notions
16 of fair play and substantial justice. A substantial portion of the events giving rise
17 to the claims alleged here occurred in this State.

18 18. Venue is proper in this District under 28 U.S.C. § 1391 because a
19 substantial part of the events, omissions, and acts giving rise to the claims herein
20 occurred in this District and because Defendant engages in continuous and
21 systematic business activities within this District..

22 **FACTUAL ALLEGATIONS**

23 19. **Product at Issue:** The specific bed frames in question are all Home
24 Design Part number 80002 Tufted Upholstered Low Profile Standard Beds, Part
25 number 80032 Tufted Upholstered Low Profile Standard Beds, Part number 80055
26 Tufted Upholstered Low Profile Standard Beds, Part number 80071 Tufted
27 Upholstered Low Profile Platform Beds, and Part number 80053 Tufted
28 Upholstered Low Profile Platform Beds. Part number 80002 is a gray, warm gray,

1 or blue bed frame with standard supports requiring a box spring, available in twin,
2 full, queen and king size. Part number 80032 is a gray or beige bed frame with
3 standard supports requiring a box spring, available in twin, full, queen and king
4 size. Part number 80055 is a silver gray, gray, or black bed frame with standard
5 supports requiring a box spring, available in king size. Part number 80071 is a
6 gray, beige, or black bed frame with platform supports which does not require a
7 box spring, available in twin, full, queen or king. Part number 80053 is a warm
8 gray bed frame with platform supports which does not require a box spring. Part
9 number 80053 does not have a center support leg halfway along the side rail. The
10 part number is provided in the installation manual and was printed on the
11 packaging. The recalled bed frames have a law label on the back of the headboard.
12 All of the foregoing beds have been recalled pursuant to the January 18, 2024
13 CPSC recall. The beds were sold at Wayfair, Walmart.com, and Overstock.com
14 from July 2018 through November 2023 for between \$100 and \$300.

15 20. **Defect at Issue:** As stated by Defendant: “The recalled beds can
16 break, sag or collapse during use, posing fall and injury hazards to consumers.”
17 The Defect affects all of the Products at issue. Defendant and the CPSC have
18 stated that “[c]onsumers should immediately stop using the recalled beds.”

19 21. **Relevant Time Period:** All of the omissions and misrepresentations
20 at issue here were uniformly and consistently made at all times while the Products
21 were sold between July 2018 and November 2023. There have been no material
22 changes to the product packaging or other consumer facing materials during the
23 relevant period.

24 22. **The Omissions and Misrepresentations:** Defendant sold the
25 Products as upholstered beds. However, Defendant failed to disclose that the beds
26 “can break, sag or collapse during use, posing fall and injury hazards to
27 consumers.”
28

1 23. The omission pertains to an unreasonable safety hazard that
2 reasonable consumers consider to be material. Indeed, Defendant has received
3 reports of 36 injuries due to the Defect.

4 24. Plaintiffs and class members would not have bought the Products, or
5 would not have bought them on the same terms, if the Defect had been disclosed.
6 The materiality of the Defect also is demonstrated by the existence of the recall.

7 25. At the time of purchase, Plaintiffs and class members did not know
8 and did not have reason to know that the Products were defective. Defendant had
9 exclusive knowledge of that fact.

10 26. Defendant made partial representations to Plaintiff and class
11 members, while suppressing the safety defect. Specifically, by displaying the
12 Products and describing its functions and parts, the Products' packaging and web
13 pages implied that they were suitable and safe to use as beds, without disclosing
14 that they had a critical safety-related defect related to the Products.

15 27. **Defendant's Pre-sale Knowledge of the Defect:** Defendant was
16 aware of the defect at the time of sale.

17 28. Before the products were first launched, Defendant knew about the
18 defect as a result of pre-release testing.

19 29. After launch, Defendant monitored a variety of sources of
20 information to detect signs of defects. These sources of information include
21 warranty claim data, customer complaints to Defendant, replacement part data,
22 field reports, and CPSC correspondence. Defendant knows that for every
23 complaint made, there is a statistical likelihood that there were many more
24 unreported incidents, and Defendant made projections about the likely
25 manifestation rate and future warranty claims based on the number of known
26 complaints.

27 30. The customer complaints about the Products also would have put
28 Defendant on notice of the defect and contributed to their pre-sale knowledge of

1 the defect, because the defect is the same or substantially similar in all material
2 respects. The number of complaints about the Products was unusually high
3 relative to the total number of products sold. The fact that so many owners made
4 similar complaints indicated that the complaints were not the result of user error or
5 anomalous incidents, but instead a systemic problem with the Products. The
6 reports and complaints from customers were similar enough to put Defendant on
7 notice that the incidents described were the result of a defect, and that the Products
8 were experiencing unusually high levels of complaints about the defect. And yet,
9 Defendant waited until it received 128 formal reports of the defect and **36**
10 **reported injuries** before instituting the recall.

11 31. Defendant also monitored and would have known about consumer
12 complaints to the CPSC. When a consumer posts a complaint on the CPSC
13 website, all of the relevant information provided to the CPSC is automatically sent
14 via email to the manufacturer and retailers. Monitoring complaints to the CPSC is
15 standard industry practice that serves as an early warning mechanism to spot
16 defects that cause safety hazards, and Defendant adhere to that practice.

17 32. **Presuit notice:** On June 7, 2024, a class member by the name of
18 Angela Bates served a notice letter via certified mail that complied with all
19 applicable notice requirements, and gave Defendant notice on behalf of the entire
20 putative class. Defendant acknowledged receipt of the letter, and yet continued to
21 not actually provide refunds or repair kits to class members.

22 33. On November 1, 2024, Plaintiff Bermudez served another letter on
23 Defendant via certified mail that complied with all applicable notice requirements,
24 and gave Defendant notice on behalf of the entire putative class.

25 34. **No Adequate Remedy At Law:** Plaintiff and members of the Class
26 are entitled to equitable relief because no adequate remedy at law exists.

27 35. Legal remedies are inadequate because they are not equally prompt
28 and certain and in other ways efficient as equitable relief.

1 36. Damages are not equally certain as restitution because the standard
2 that governs restitution is different than the standard that governs damages.
3 Hence, the Court may award restitution even if it determines that Plaintiff fail to
4 sufficiently adduce evidence to support an award of damages.

5 37. Damages and restitution are not the same amount. Unlike damages,
6 restitution is not limited to the amount of money Defendant wrongfully acquired
7 plus the legal rate of interest. Equitable relief, including restitution, entitles a
8 plaintiff to recover all profits from the wrongdoing, even where the original funds
9 taken have grown far greater than the legal rate of interest would recognize.
10 Plaintiff seeks non-restitutionary disgorgement of profits in connection with his
11 unjust enrichment claim.

12 38. Legal claims for damages are not equally certain as restitution
13 because equitable claims entail few elements.

14 39. In short, significant differences in proof and certainty establish that
15 any potential legal claim cannot serve as an adequate remedy at law.

16 40. **The Recall Does Not Render This Lawsuit Moot:** The recall does
17 not render this lawsuit moot because it does not provide all of the same relief
18 available in this lawsuit.

19 41. First, as can be seen with Plaintiff's experience, Defendant is not
20 honoring the recall, or may only show a willingness to do so upon service of
21 notice by a class member to file a class action lawsuit. Despite following the
22 instructions provided to class members and submitting all information one day
23 after the recall was announced on January 19, 2024, Plaintiff has still not received
24 a repair kit (or a refund).

25 42. As discussed above, the proffered repair kits also come so late (or not
26 at all) as to be valueless, as a reasonable consumer cannot afford to wait for
27 months on end for a putative repair kit to hopefully arrive one day – all the while
28 storing a large bed that they have been instructed to not use. Reasonable

1 consumers, given the unlikely prospect of ever receiving a repair kit (or, at a
2 minimum not within a reasonable amount of time), throw out Defendant's
3 defective beds after being told not to use them.

4 43. Further, no refunds are provided.

5 44. The CLRA provides that "in no case shall the total award of damages
6 in a class action be less than one thousand dollars (\$1,000)." Cal. Civ. Code §
7 1780(a)(1). That is more than the provided for under the recall.

8 45. The recall was only briefly publicized and in a very limited manner.
9 Therefore, on information and belief, many eligible class members remain
10 unaware of it, and the response rate has been low. The amount and reach of the
11 publicity concerning the notice of recall was not comparable to the typical notice
12 provided in a class action.

13 **CLASS ALLEGATIONS**

14 46. ***Class Definition:*** Plaintiff brings this action on behalf all people the
15 following classes and subclasses:

16 47. **Multi-State Implied Warranty Class:** All persons who purchased a
17 subject bed Product for personal, family, or household use: (1) in Alaska,
18 Arkansas, California, Delaware, District of Columbia, Hawaii, Indiana, Kansas,
19 Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, North
20 Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South
21 Dakota, Texas, Utah, Virginia, or Wyoming within the applicable statute of
22 limitations; or (2) in Colorado or Massachusetts within the applicable statute of
23 limitations.

24 48. **Multi-State Consumer Protection Class:** All persons who purchased a
25 subject bed Product for personal, family, or household use: (1) in the states of
26 Michigan, Minnesota, or New Jersey within the applicable statute of limitations;
27 (2) in the state Missouri within the applicable statute of limitations; (3) in the
28 states of California, Florida, Massachusetts, or Washington within the applicable

1 statute of limitations; (4) in the states of Illinois and New York within the
2 applicable statute of limitations.

3 49. California class: all people who purchased or leased a subject bed
4 Products in California.

5 50. Each of the above class definitions is a placeholder that “may be
6 altered or amended before final judgment.” Fed. Civ. P. 23(c)(1)(C). Subject to
7 additional information obtained through further investigation and discovery, the
8 foregoing class definitions may be expanded or narrowed by amendment or in the
9 motion for class certification, including through the use of multi-state subclasses
10 to account for material differences in state law, if any.

11 51. Excluded from the putative classes are Defendant and any entities in
12 which Defendant has a controlling interest, Defendant’s agents and employees, the
13 judge to whom this action is assigned, members of the judge’s staff, and the
14 judge’s immediate family. Also excluded are any claims for personal injury.

15 52. **Numerosity.** Members of the Class are so numerous that their
16 individual joinder herein is impracticable. On information and belief, each Class
17 or Subclass includes thousands of consumers. The precise number of Class
18 Members and their identities are unknown to the Plaintiff at this time but may be
19 determined through discovery. Class Members may be notified of the pendency of
20 this action by mail and/or publication through the distribution records of
21 Defendant or other means.

22 53. **Commonality and Predominance.** Common questions of law and
23 fact exist as to all Class Members and predominate over questions affecting only
24 individual Class Members. Common legal and factual questions include, but are
25 not limited to:

26 (a) Whether Defendant knew or should have known of the defect
27 at issue in this case, and if so, when they discovered the defect;
28

1 (b) Whether knowledge of the defect at issue in this case would be
2 important to a reasonable person, because, among other things, it poses an
3 unreasonable safety hazard;

4 (c) Whether Defendant failed to disclose and concealed the
5 existence of the defect from potential customers;

6 (d) Whether Defendant's conduct, as alleged herein, violates the
7 consumer protection laws asserted here;

8 54. **Typicality.** Plaintiff's claims are typical of the claims of the Classes
9 in that Plaintiff and the Classes sustained damages as a result of Defendant's
10 uniform wrongful conduct, based upon Defendant's failure to inform Plaintiff and
11 all others similarly situated that the products at issue here can be dangerous.

12 55. **Adequacy.** Plaintiff will fairly and adequately protect the interests of
13 Class members. Plaintiff has retained counsel that is highly experienced in
14 complex consumer class action litigation, and Plaintiff intends to vigorously
15 prosecute this action on behalf of the Class. Plaintiff has no interests that are
16 antagonistic to those of the Class. Plaintiff has no past or present financial,
17 employment, familial, or other relationship with any of the attorneys in this case
18 that would create a conflict of interest with the proposed class members.

19 56. **Superiority.** A class action is superior to all other available methods
20 for the fair and efficient adjudication of this controversy for, inter alia, the
21 following reasons: prosecutions of individual actions are economically impractical
22 for members of the Classes; the Classes are readily definable; prosecution as a
23 class action avoids repetitious litigation and duplicative litigation costs, conserves
24 judicial resources, and ensures uniformity of decisions; and prosecution as a class
25 action permits claims to be handled in an orderly and expeditious manner.

26 57. Without a class action, Defendant will continue a course of action
27 that will result in further damages to the Plaintiff and Members of the Classes and
28 will likely retain the benefits of its wrongdoing.

COUNT I

**Violations of California’s Unfair Competition Law (“UCL”)
Cal. Bus. & Prof. Code §§ 17200, *et seq.***

58. Plaintiff incorporates and realleges each preceding paragraph as though fully set forth herein.

59. Plaintiff brings this cause of action individually and on behalf all other class members.

60. California Business & Professions Code Section 17200 prohibits acts of “unfair competition,” including any “unlawful, unfair or fraudulent business act or practice” and “unfair, deceptive, untrue or misleading advertising.”

61. Defendant acted with knowledge and intent.

62. Plaintiff alleges a claim under all three prongs of the UCL.

63. As alleged above, Defendant engaged in fraudulent conduct that had the tendency or capacity to deceive or confuse reasonable consumers.

64. Defendant’s conduct also constitutes “unfair” business acts and practices within the meaning of the UCL, in that its conduct was injurious to consumers, offended public policy, and was unethical and unscrupulous. Defendant’s violation of consumer protection and unfair competition laws resulted in harm to consumers.

65. Plaintiff also alleges a violation under the “unlawful” prong of the UCL because Defendant’s conduct violated consumer protection laws and the common law as set forth herein.

66. As a direct and proximate result of Defendant’s unfair and deceptive practices, Plaintiff and the other members of the Class have suffered out-of-pocket losses.

67. Plaintiff and class members have suffered an injury in fact resulting in the loss of money and/or property as a proximate result of the violations of law

1 and wrongful conduct of Defendant alleged herein, and they lack an adequate
2 remedy at law to address the unfair conduct at issue here.

3 68. Plaintiff seeks all relief available under the UCL.

4 **COUNT II**

5 **Violations of California’s Consumer Legal Remedies Act (“CLRA”)**
6 **Cal. Civ. Code §§ 1750, *et seq.***

7 69. Plaintiff incorporates and realleges each preceding paragraph as
8 though fully set forth herein.

9 70. Plaintiff brings this cause of action individually and on behalf all
10 other class members.

11 71. Defendant is a “person” as defined by California Civil Code
12 § 1761(c).

13 72. Plaintiff and the other Class members are “consumers” within the
14 meaning of California Civil Code § 1761(d).

15 73. For the reasons alleged above, Defendant violated California Civil
16 Code § 1770(a)(5)(7) and (9).

17 74. Plaintiff provided pre-suit notice of the claims asserted under the
18 CLRA, in compliance with all of the CLRA’s requirements.

19 75. Defendant’s unfair and deceptive acts or practices occurred
20 repeatedly in Defendant’s trade or business.

21 76. Defendant acted with knowledge and intent.

22 77. Defendant engaged in conduct that had the tendency or capacity to
23 deceive or confuse reasonable consumers.

24 78. With respect to restitution under the CLRA claim, Plaintiff allege in
25 the alternative that they lack an adequate remedy at law for the reasons already
26 alleged above.

27 79. As a result of Defendant’s misconduct, Plaintiff and other Class
28 members have suffered monetary harm.

80. Plaintiff seeks all relief available under this cause of action, except damages. Plaintiff may amend this claim at a later time to add a damages claim.

COUNT III

1 owner's manual, which was tucked away in the product packaging and not made
2 available until after purchase.

3 90. Defendant's actions have deprived Plaintiff and class members of the
4 benefit of their bargains and have caused the Products to be worth less than what
5 Plaintiff and other class members paid.

6 91. As a direct and proximate result of the breach of implied warranty,
7 class members received goods whose condition substantially impairs their value.
8 Class members have been damaged by the diminished value of their Products.

9 92. Under Cal. Civ. Code §§ 1791.1(d) and 1794, Plaintiff and class
10 members are entitled to damages and other legal and equitable relief, including, at
11 their election, the right to revoke acceptance of the Products or the overpayment or
12 diminution in value of their products. They are also entitled to all incidental and
13 consequential damages resulting from the breach, as well as reasonable attorneys'
14 fees and costs.

15 93. Plaintiff seeks all relief available under this cause of action.

16 **COUNT IV**
17 **Breach of Implied Warranty**

18 94. Plaintiff incorporates and realleges each preceding paragraph as
19 though fully set forth herein.

20 95. Plaintiff brings this cause of action individually and on behalf all
21 other class members.

22 96. Defendant, as the designer, manufacturer, marketer, distributor,
23 and/or seller of the products at issue, impliedly warranted that they would pass
24 without objection in trade under the contract description; was fit for the ordinary
25 purpose for which the products would be used; and conformed to the promises or
26 affirmations of fact made on the container or label.

27 97. Defendant breached its warranty implied because the products could
28 not pass without objection in the trade under the contract description, they were

1 not adequately labeled because there was no disclosure of the defect at issue; and
2 they are unfit for their ordinary purpose. As a result, Plaintiff and members of the
3 Classes did not receive the goods as impliedly warranted by Defendant to be
4 merchantable.

5 98. Plaintiff and Members of the Classes purchased the products in
6 reliance upon Defendant's skill and judgment and the implied warranties of fitness
7 for the purpose.

8 99. The products were defective when it left the exclusive control of
9 Defendant.

10 100. Plaintiff and class members did not receive the goods as warranted.

11 101. The Products were not sold on an "as is" or "with all faults" basis.

12 102. Any purported disclaimer of implied warranties was ineffective
13 because it was not conspicuous and not made available to the purchaser before the
14 sale of the product. Instead, if a disclaimer was made at all, it was buried in an
15 owner's manual, which was tucked away in the product packaging and not made
16 available until after purchase.

17 103. As a direct and proximate cause of Defendant's breach of the implied
18 warranty, Plaintiff and class members have been injured and harmed because: (a)
19 they would not have purchased the products on the same terms if they knew that
20 the Product was dangerous; and (b) the Product does not have the characteristics,
21 uses, or benefits as promised by Defendant.

22 104. Plaintiff seeks all relief available under this cause of action.

23 **COUNT V**
24 **Unjust Enrichment**

25 105. Plaintiff incorporates and realleges each preceding paragraph as
26 though fully set forth herein.

27 106. Plaintiff brings this cause of action individually and on behalf all
28 other class members.

1 107. To the extent required, Plaintiff asserts this cause of action in the
2 alternative to legal claims, as permitted by Rule 8.

3 108. The unjust enrichment claims are premised on Defendant's pre-sale
4 activities and are unrelated to their post-sale obligations to provide repairs.

5 109. Plaintiff and the class members conferred a benefit on Defendant in
6 the form of the gross revenues Defendant derived from the money they paid to
7 Defendant.

8 110. Defendant knew of the benefit conferred on it by Plaintiff and the
9 Class Members.

10 111. Defendant has been unjustly enriched in retaining the revenues
11 derived from Plaintiff's and the Class Members' purchases of the products, which
12 retention of such revenues under these circumstances is unjust and inequitable
13 because Defendant omitted that the products were dangerous. This caused injuries
14 to Plaintiff and class members because they would not have purchased the
15 products or would have paid less for them if the true facts concerning the products
16 had been known.

17 112. Defendant accepted and retained the benefit in the amount of the
18 gross revenues it derived from sales of the products.

19 113. Defendant has profited by retaining the benefit under circumstances
20 which would make it unjust for Defendant to retain the benefit.

21 114. Plaintiff and the Class Members are, therefore, entitled to restitution
22 in the form of the revenues derived from Defendant's sale of the Products.

23 115. As a direct and proximate result of Defendant's actions, Plaintiff and
24 class members have suffered in an amount to be proven at trial.

25 116. Putative class members have suffered an injury in fact and have lost
26 money as a result of Defendant's unjust conduct.

117. Putative class members lack an adequate remedy at law with respect to this claim and are entitled to non-restitutionary disgorgement of the financial profits that Defendant obtained as a result of its unjust conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks judgment against Defendant, as follows:

- a. For an order certifying the classes alleged in this complaint, and naming Plaintiff as the representatives of those classes;
- b. For an order declaring Defendant's conduct violates the statutes referenced herein;
- c. For an order finding in favor of Plaintiff and class members on all counts asserted herein;
- d. For actual, compensatory, statutory, and/or punitive damages in amounts to be determined by the Court and/or jury;
- e. For prejudgment interest on all amounts awarded;
- f. For an order of restitution and all other forms of equitable monetary relief;
- g. For an order awarding Plaintiff and class members their reasonable attorneys' fees, expenses, and costs of suit.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury on all claims so triable.

Dated: November 7, 2024

Respectfully submitted,

/s/ Yeremey Krivoshey

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CLRA Venue Declaration, Civil Code § 1780(c)

I, Yeremey Krivoshey, declare as follows:

1. I have personal knowledge to the facts stated herein and, if called upon to do so, could competently testify hereto.

2. I am the attorney for Plaintiff in the above-captioned action.

3. I submit this declaration in support of the Class Action Complaint, which is based in part on violations of the Consumers Legal Remedies Act, California Civil Code § 1750 *et seq.*

4. The Class Action Complaint has been filed in the proper place for trial of this action.

5. It is my understanding that Defendant regularly transacts business in this County, and the acts and omissions giving rise to this action occurred in large part in this County.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge. Executed on November 7, 2024 in Louisville, KY.

By: /s/ Yeremey Krivoshey

Yeremey Krivoshey